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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **JULIO MAYEN**
11 Plaintiff,
12

13 vs.
14

15 **BANK OF AMERICA, N.A.,**
16 **AND RECONTRUST**
17 **COMPANY, N.A.**
18 Defendants,
19

Case No. 13-cv-2080-MMA (BGS)

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION PER FRCP 59(E)
AND LOCAL RULE 7.1i**

DEMAND FOR JURY TRIAL

Date: March 31, 2014
Time: 2:30 p.m.
Place: Courtroom 3A
Hon. Judge: Michael M. Anello

1 **TO THE HONORABLE COURT OF RECORD, DEFENDANT'S AND**
2 **THEIR ATTORNEYS OF RECORD:**

3
4 1. Plaintiff, Julio Mayen, (plaintiff), hereby moves this court, under and
5 pursuant to F.R.Civ.P. 59(e) and L.Civ.R. 7.1(i), for reconsideration of the Court's
6 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS (Order)** filed
7 on January 7, 2014 (Docket 16), that granted defendants' motions to dismiss with
8 prejudice.
9

10
11 **INTRODUCTORY STATEMENT**

12
13 **COURT'S ORDER TO DISMISS PLAINTIFF'S CASE FOR FDCPA**
14 **VIOLATIONS WITH PREJUDICE REFLECTS FUNDAMENTAL**
15 **MISAPPREHENSION OF CASE**

16 2. Plaintiff's case is an action brought against Recontrust, Company, N.A.,
17 (hereafter: Recontrust) and Bank of America, N.A. (hereafter: BANA) for violations
18 of Fair Debt Collection Practices Act (hereafter: FDCPA or the Act), 95-109; 91
19 Stat. 874, codified as 15 U.S.C. §1692.
20

21
22 3. Plaintiff recognizes that there is authority in case law that provides that under
23 certain set of facts a person, or a person which may be a Servicer of a mortgage loan
24 can be considered to be exempt for the definition of debt collector as defined by
25 FDCPA 15 USC §1692a, however, this present case, Defendant: BANA is not
26 exempt by definition under the Act.
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4. Plaintiff further recognizes that there is authority in case law that provides that under certain set of facts a person, or a person which may be a Trustee or Substituted Trustee under a Deed of Trust of a can be considered to be exempt for the definition of debt collector as defined by FDCPA 15 USC §1692a, however, this present case, Defendant: Recontrust is not exempt by definition under the Act. Here's why: First it must be noted that there is no evidence within the record of this case that either Defendant is "the consumer's creditors", "a mortgage servicing company" or "an assignee of a debt". It is no more than a presumption, without support of any factual evidence for either Defendant to be considered, as a matter of law to be "the consumer's creditors", or "a mortgage servicing company", or "an assignee of a debt". Such fact would have to be determined to be so after an evidentiary hearing, where such evidence must be admitted into evidence according to the Federal Rules of Evidence.

Page 4 beginning at line 11 the court in its **Order** stated:

The Court has determined that Plaintiff's case against the Defendants must be dismissed with prejudice for the reasons, as the Court writes, this Court and others "consistently have found that nonjudicial foreclosure is not debt collection because 'a debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned.'"

The last phrase in the above quote is critical to this reconsideration as it is key to Defendants' motion in chief as revealed herein.

1 5. On page 5 beginning at line 4 down to line 9 thereafter the **Order** continues,
2 however, with an assertion that reflects a fundamental misapprehension of plaintiff's
3 case regarding status of named defendants'. The decision states:
4

5 "Neither defendant in this case qualifies as a "debt collector" within the
6 meaning of the FDCPA. Nor do the nonjudicial foreclosure
7 proceedings against Plaintiff's property fall within the FDCPA's
8 meaning of "debt collection." Accordingly, Plaintiff cannot state a
9 claim under the FDCPA against Defendants as a matter of law.
10 Plaintiff's FDCPA claims are therefore subject to dismissal with
11 prejudice."

12 6. It is claimed by opposing counsel Ms. Farrell, that located in local county of
13 San Diego public records: Assignment of Deed of Trust (Defendants' RJN exhibit
14 B), that Plaintiff's alleged loan documents are in said trust.

15 7. They claim that Beneficiary of said Trust has substituted Recontrust for
16 original Trustee of alleged Deed of Trust (Defs' RJN Exhibit A) and is therefore
17 now substituted trustee under said alleged Deed of Trust. However, located in the
18 Pooling and Servicing Agreement (hereinafter P&SA) for such Trust, it is revealed
19 that the Master Servicer under said Trust is: Countrywide Home Loans Servicing,
20 LP, (hereinafter CWHLS, LP).
21

22 8. The Court can see from the Security Exchange Commission (hereinafter SEC)
23 website showing the public records that the named entity that is listed as the Master
24 Servicer under the P&SA associated with Defendants' **Exhibit B** is CWHLS, LP as
25
26
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1 of January 30, 2005. Exhibit 9 and judicially notice by Plaintiff, the website links as
2 follows:

3
4 *[http://edgar.sec.gov/Archives/edgar/data/906410/000095012905000802/v046](http://edgar.sec.gov/Archives/edgar/data/906410/000095012905000802/v04620e424b5.txt)*
5 *[20e424b5.txt](http://edgar.sec.gov/Archives/edgar/data/906410/000095012905000802/v04620e424b5.txt)*

6
7 Further, the Federal Reserve System's repository of data compiled by its
8 NATIONAL INFORMATION CENTER, (hereafter: NIC) where link repository
9 provides at its website link:

10
11 *[http://www.ffiec.gov/nicpubweb/nicweb/InstitutionHistory.aspx?parID_RSSD](http://www.ffiec.gov/nicpubweb/nicweb/InstitutionHistory.aspx?parID_RSSD=3035311&parDT_END=20110630)*
12 *[=3035311&parDT_END=20110630](http://www.ffiec.gov/nicpubweb/nicweb/InstitutionHistory.aspx?parID_RSSD=3035311&parDT_END=20110630)*

13
14 The Federal Reserve Systems NIC site link above shows that the Master Servicer
15 was renamed on April 27, 2009 when the official name of said entity became: BAC
16 Home Loans Servicing, LP. **The above website is common knowledge of those in**
17 **the industry.**

18
19 9. Recontrust nearly three years later caused to be filed for record in office of
20 the County Recorder's of San Diego County on March 20, 2012 a document titled:
21 **NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF**
22 **TRUST (hereinafter NOD).** The Court has taken judicial notice of this document
23 at the request of Defendants identified as Defendant's **Exhibit D.** The foregoing
24 fact is evident because the Court states in its order filed on January 7, 2014 on page
25 3 beginning at line 6 down to line 10:
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1
2 “The Court has examined each of the exhibits for which Defendants
3 request judicial notice and finds that each exhibit is suitable for judicial
4 notice as a matter of public record whose accuracy is not *reasonably* in
5 question. *See* Fed. R. Evid. 201(b). The Court takes judicial notice of
6 the existence and legal effect of the documents.

7 In light of the foregoing, please be advised that Defendants’ **Exhibit D** which Ms.
8 Farrell identifies as page 33 in her request for Judicial Notice, at the second from the
9 last sentence from the bottom of the second page of four pages of **NOD**’s filing the
10 Court can see that such sentence reads:

11 “That a breach of, and default in, the obligations for which such
12 Deed of Trust is security has occurred in that payment has not
13 been made of: **FAILURE TO PAY THE INSTALLMENT OF**
14 **PRINCIPAL AND INTEREST WHICH BECAME DUE ON**
15 **03/01/2009 AND ALL SUBSEQUESNT INSTALLMENTS OF**
16 **PRINCIPAL AND INTEREST, TOGETHER WITH ALL LATE**
17 **CHARGES; PLUS ADVANCES MADE AND COSTS INCURRED**
18 **BY THE BENEFICIARY INCLUDING FORECLOSURE FEES**
19 **AND COSTS AND/OR ATTORNEYS FEES. IN ADDITION, THE**
20 **ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON**
21 **01/01/2035 AS A RESULT OF THE MATURITY OF THE**
22 **OBLIGATION ON THAT DATE.”**

23 10. Therein said **NOD** [Defendant’s **Exhibit D**] instrument recorded of public
24 record for all the world to see, it is claimed by Recontrust that the date of the alleged
25 default (hereafter: **DEFAULT DATE**) for: **FAILURE TO PAY** under alleged
26 obligation to pay for the benefit of alleged Beneficiary Trust wherein The Bank of
27 New York Mellon is allegedly claimed Trustee under the alleged assignment of
28 Deed of Trust was March 1, 2009.

1 11. On the alleged **DEFAULT DATE**, March 1, 2009, said Trust's named
2 Trust's Master Servicer was CWHLS, LP, at least we have no evidence that the
3 Master Service was changed prior to or on the date of Default naming Defendant
4 BANA or for that matter anyone else Master Servicer or Loan Servicer. If such is
5 the case, then how can the court do so? Further on June 13, 2011 over two years
6 after the March 1, 2009 alleged default had occurred, an **Assignment of Deed of**
7 **Trust** [Defendant's **Exhibit B**] identified on page 29 of Defendant's Request of
8 Judicial Notice (**DRJN**) was recorded in the office of the County Recorder of San
9 Diego County assigning **The Bank of New York Mellon FKA THE BANK OF**
10 **NEW YORK , AS TRUSTEE OF THE CERTIFICATE HOLDERS OF**
11 **CWMBS, INC., CHL MORTGAGE PASS-THROUGH TRUST 2005-7,**
12 **MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-7** all
13 beneficial interest in that certain alleged deed of trust.

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19 12. Bearing in mind the foregoing, it is clear that the State of New York trust
20 laws and the governing P&SA typically prohibits a trust from purchasing an asset
21 currently in default. In this case for three (3) years? Particularly so given the
22 further fact that said trust had three (3) years prior to said alleged default executed a
23 Form 15D with the Security Exchange Commission on January 20, 2006 which is a
24 certification of termination of registration with the SEC. See copy of Form 15D
25 attached herein as Plaintiff's **Exhibit 7**.

1 13. Further still over three years passed after said March 1, 2009 alleged default
2 had occurred, then on March 20, 2012, enters named defendant Recontrust into this
3 picture by way of a recorded **Substitution of Trustee** instrument identified as
4 recording Doc. # 2012-0159978 naming Recontrust as the new trustee identified in
5 **DRJN** as Defendant's **Exhibit C** upon which this honorable court has previously
6 taken judicial notice of. To do so three years after said ALLEGED DEFAULT
7 DATE has been set, the only thing all these Johnny comes lately can ever hope to be
8 by statutory definition are DEBT COLLECTORS surreptitiously posing as
9 creditor, lender, loan servicer, etc., in violation of Title 15 U.S.C. 1692 (e), (11),
10 (14). To be honest it does appear that a litany of robo-signed documents are being
11 employed by Ms. Farrell who obviously has done no vetting of the veracity of any
12 of her documents filed in support of her motion which is indicative of a lack of good
13 faith and further points to her apparent premeditated violation of FRCP Rules 11,
14 65(h), Title 15 U.S.C. 45 et seq., Title 18 U.S.C. 1341, 1346 as well as California
15 Business & Profession Code 6068(d), Penal Code 134, ethical duties of attorney
16 among other high crimes and misdemeanors to be more fully detailed herein.

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23 14. Given the fact that the court has taken judicial notice of the foregoing exhibits
24 filed of record by Ms. Farrell, it is clear that the court has further not really paid
25 attention to the actual content of what was contained on the face of each judicially
26 noticed document for if the court had, it could not in all good conscience have
27
28

1 granted Defendants' motion to dismiss in general and certainly not have granted said
 2 dismissal with prejudice, for to do so would constitute an egregious miscarriage of
 3 justice by willful violation of well settled law.
 4

5 15. Accordingly, therefore, the **Order** (Doc 16, pg 5: 7-9) does not show how the
 6 conclusion —
 7

8 **“Accordingly, Plaintiff cannot state a claim under the FDCPA**
 9 **against Defendants as a matter of law. Plaintiff's FDCPA claims**
 10 **are therefore subject to dismissal with prejudice”**

11 — could possibly have been reached absent a complete dereliction of duty on part of
 12 the court to properly vet the records and documents entered into the case that were
 13 relied upon for its order in spite of its written claim, (Doc 16, pg 3: 6-8):
 14

15 **“The Court has examined each of the exhibits for which Defendants**
 16 **request judicial notice...”**

17 There can be no other reason or basis as the court's own standard,
 18 (Doc 16, pg 4: 12-14):
 19

20 **“a debt collector does not include the consumer's creditors, a mortgage**
 21 **servicing company, or an assignee of a debt, as long as the debt was**
 22 **not in default at the time it was assigned”**

23 is a standard that is binding upon this honorable court.

24 16. In good faith Plaintiff is persuaded to believe that Plaintiff has met the burden
 25 to establish that the court's own standard herein cited as been met proving that
 26 Defendant BANA is a debt collector and became the purported loan servicer, after
 27 the March 1, 2009 alleged default, **if it ever** became a loan servicer which Plaintiff
 28

1 seriously doubts based upon its own letters mailed to Plaintiff infra.

2 17. What is patently obvious is that a candid world making an inquiry reasonable
3
4 under the circumstances of the foregoing law, facts and evidence would conclude
5 the same as Plaintiff has. In fact, Defendants' own **Exhibit D** and Defendant
6 BANA's five letters to Plaintiff identified herein as Plaintiff's **Exhibits 1-5** impeach
7
8 both Defendants' counsel's alleged claims and the courts findings of fact and
9 conclusions of law in its order dismissing Plaintiff's complaint with prejudice as a
10 matter of law. As such, it is now the sworn duty of this court to declare that the
11
12 foregoing is true, correct and just and that such is the case for this instant action.

13
14 **PLAINTIFF NOW ADDRESSES MS. FARRELL'S MOTION TO DISMISS**
15 **AND HER INTENT BEHIND DRAFTING SUCH:**
16

17 18. Defendants' MOTION TO DISMISS shows that it is signed by attorney:
18 Elizabeth C. Farrell, SBN 280056 on October 28, 2013. By signing said motion to
19 dismiss, Ms. Farrell is subject to Federal Rules of Civil Procedure Rule 11, where
20
21 Ms. Farrell is deemed to have certified to her pleading.

22 19. Rule 11 requires among other things, that Ms, Ferrell by presenting to the
23 Court her pleadings: Motion to Dismiss that to the best of her knowledge,
24 information, and belief, formed after an inquiry reasonable under the circumstances
25
26 (here quoting from the Federal Rule:
27

28 **(1) it is not being presented for any improper purpose, such as to**

1 harass, cause unnecessary delay, or needlessly increase the cost of
2 litigation;

3 (2) the claims, defenses, and other legal contentions are warranted
4 by existing law or by a nonfrivolous argument for extending,
5 modifying, or reversing existing law or for establishing new law;

6 (3) the factual contentions have evidentiary support or, if
7 specifically so identified, will likely have evidentiary support after a
8 reasonable opportunity for further investigation or discovery; and

9 (4) the denials of factual contentions are warranted on the evidence
10 or, if specifically so identified, are reasonably based on belief or a
11 lack of information.

12
13 20. At Page 3 of said Motion's Memorandum of Points and Authorities at line 10,

14 Ms. Farrell writes the following:

15 "As shown below, Defendants request for dismissal of each complaint
16 is warranted, since all of the claims fail to state a plausible claim for
17 relief."

18 Based upon what Ms. Farrell has written in her Motion to Dismiss Plaintiff believes
19 that the above statement cannot be fully true or is at least not warranted to the extent
20 that her Motion to Dismiss merits a ruling from the court that Plaintiff's Complaint
21 be dismissed with prejudice. Plaintiff believes that Ms. Farrell is in violation of Rule
22 11 because she writes at line 2 of page 6 the following:

23 "Nor does he allege that Defendants used unfair or unconscionable
24 means to collect a debt. Instead, the gravamen of this claim is that
25 Defendants have not proven the Plaintiff owes a debt and threatened
26 "non-judicial [foreclosure] action"

27 This statement of Ms. Farrell is untrue. The Truth is that Plaintiff has alleged that
28 Defendants have used unfair and unconscionable means to collect a debt, for
example see: page 12 of Plaintiffs Complaint at line 24 where Plaintiff states:

1 “15 U.S.C. § 1692(e)(2), 15 U.S.C. § 1692(e)(5), 15 U.S.C. §
2 1692(e)(10), 15 U.S.C. § 1692(f)(6) by providing false and misleading
3 information by mailing a demand letters to the Plaintiff which asked for
4 a lump sum of money (here Plaintiff refers to debt collector demand
5 letters which were received through use of the mails.” See Plaintiff’s
6 **Exhibits 1-5).**

7 21. Plaintiff alleges 7 additional violations by Defendants’ on page 13 lines 2
8 through 27. On page 14, at line 4 Plaintiff alleges that Plaintiffs have violated 15
9 U.S.C. § 1692(g) by failing to follow up after their first contact they made to
10 Plaintiff within the required time as is required by that section. In fact Defendants
11 never have sent the required 15 U.S.C. § 1692(g) validation letter to Plaintiff, nor
12 have they responded to Plaintiff’s notice that he denies any debt that they claim he
13 owes.
14

15 22. On page 8 line 21 of Defendants’ Motion to Dismiss Ms. Farrell states:
16

17 “And Plaintiff fails to prove that Defendants are ‘debt collector.’ For
18 these reasons, Defendants’ motion to dismiss should be granted.”

19 Plaintiff was under the impression that the time to prove that Defendants are indeed
20 “debt collectors as that term is defined by 15 U.S.C. § 1692 was not in Plaintiff’s
21 Complaint per 15 U.S.C. § 1692et seq., but at a later part of the actions process.
22

23 23. Plaintiff believe that with the information that he now has recently acquired
24 from the official public records of the Federal Reserve System’s NIC and from the
25 SEC he will be able to obtain certified copies of same from these agencies that will
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1 be admissible by the Court that will indeed prove that BANA could not have been a
 2 servicer of the Trust which they all claim is the Trust which holds the alleged
 3 note and Deed of Trust and is the alleged Beneficiary of their alleged claim.
 4

5 24. But, the folks over at BANA, have always known that they are debt collectors
 6 under the Act's definition of that term and that they are indeed subject to the Act in
 7 this matter. No greater proof is needed than Defendant Recontrust's own **Exhibit D**
 8 and the five (5) letters mailed to Plaintiff through the U.S. Mail Service by said
 9 Defendant BANA which open and notoriously state the following on each letter:
 10

11
 12 **"This communication is from Bank of America, N.A., the servicer**
 13 **of your home loan. Bank of America, NA is required by law to**
 14 **inform you that this communication is from a debt collector"**

15 A copy of each letter is attached herein as **Exhibits 1-5** for the court's consideration.

16 25. In light of the foregoing, was it not the mandated duty of Ms. Farrell to know
 17 that her alleged client, Defendant: BANA is a debt collector under the Act? If not
 18 then why not? Plaintiff is persuaded to believe that Ms. Farrell in point of fact did
 19 know this. No doubt this is why she has worked so hard to take all eyes off the fact
 20 that Plaintiff's Complaint is about FDCPA violation and not about a discontented or
 21 disillussioned debtor of some sort of loan and that Plaintiff is just trying to use is
 22 FDCPA Complaint to stall a foreclosure.
 23
 24
 25

26 26. There is no foreclosure. The public policy does not and cannot recognized
 27 that any foreclosure has been initiated by the Defendants' and Ms. Farrell should
 28

1 stop trying to edit and reframe and thereby misrepresent Plaintiff's Complaint to her
2 own ends and for her own and the Defendants' benefit. Title 12 CFR 226.39 agrees
3 with Plaintiff regarding a loan servicer has no power to initiate a foreclosure.
4

5 27. On page 8 beginning at line 8 Ms. Farrell's motion she again resorts to her
6 favorite ploy, that is her obsession with some non-existent foreclosure.
7

8 "Second, this claim fails to the extent it relates to the foreclosure
9 because FDCPA does not apply to foreclosure activity."

10 Well, Plaintiff again answers Ms. Farrell's above statement by saying that there is
11 no extent that Plaintiff claim relates to "any foreclosure."
12

13 28. Further, Defendants' request for dismissal of said Complaint does not seek
14 that such dismissal be granted with prejudice. Plaintiff is shocked by the Court's
15 decision which not only shuts off any opportunity to amend any insufficiency in his
16 Complain but which dismisses his Complaint out of hand without leave to amend,
17 ie., where Plaintiff's Complaint has been dismissed with prejudice by the Court.
18

19 29. Plaintiff motions this Court to reconsider its order to dismiss Plaintiff's
20 Complaint with prejudice, and that the Court instead order that Plaintiff be given the
21 opportunity to either amend his Complaint where it may be insufficient, or, allow
22 Plaintiff to file a different more sufficient Complaint against Defendants' for
23 violations of FAIR DEBT COLLECTION PRACTICES ACT against Defendants:
24 Recontrust Company, N.A., and BANA, in the future.
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1 30. Plaintiff believes that the Court in its decision to dismiss Plaintiff's Complaint
2 with prejudice has been influenced by certain allegations made by attorney for
3 Defendants: Ms. Farrell in her Motion to Dismiss and its Memorandum of Points
4 and Authorities.
5

6 Plaintiff believes that some of the writings that Ms. Farrell has made in her Motion
7 to Dismiss Plaintiff's Complaint and its Memorandum of Points and Authorities are
8 false or cause the reader to believe that the debt collection activities in which
9 Defendants' have engaged are exempt from falling under FDCPA. Plaintiff is
10 persuaded to believe based upon his knowledge and belief as he was prior informed
11 and is now further informed, shows that Ms. Farrell's Motion does not warrant a
12 decision from the Court that Plaintiff's Complaint be dismissed with prejudice.
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16 31. The Court in its order to dismiss Plaintiff's Complaint with prejudice states
17 on page 1 of such order at line 22 the following:
18

19 Plaintiff disputes Defendants' authority to initiate and pursue
20 foreclosure proceedings against the subject property.

21 There is nowhere in Plaintiff's complaint where he disputes Defendants' authority to
22 initiate and pursue foreclosure proceeding, and one wonders how the Court would
23 come to believe the Plaintiff has so disputed. Could it be that the Court has been
24 influenced by the cast by Ms. Farrell in her motion's writings such as that which is
25 found on page 4, line 18 where Ms. Farrell states:
26
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1 “Reading the Complaint as a whole, it appears this cause of action of
2 action relates to the foreclosure proceedings initiated against the
3 Property and Plaintiff’s conclusion that Defendants have no authority to
4 foreclose.

5 32. It may seem Plaintiff is picking on Ms. Farrell in excess. But the problem lies
6 as much with her alleged clients, Defendants BANA and its cohorts who are in fact
7 debt collectors under the FDCPA and therefore subject thereto and as debt collectors
8 have employed means, methods, practices and tactics which are indeed considered
9 unfair pursuant to said Act as well as Title 15 U.S.C. 45 which Congress declares at
10 (a) (1): unfair or deceptive acts or practices in or affecting commerce, are hereby
11 declared unlawful.
12 13

14 33. In order to get the heat off of her clients Ms. Farrell would need to get the
15 Court to believe that there has been a foreclosure initiated as a matter of law and at
16 the same time get the court to believe that a loan servicer is excluded from the Act.
17 Ms. Farrell would need to cause the Court to believe that the Defendants were
18 engaged in foreclosure activities. She would need to cause the court to believe
19 wrongly that the Defendants were not debt collector under the Act, even that both
20 she and her Defendants have known all along that they could not have acquired any
21 interest that they may actually have, until years after the alleged DEFAULT
22 DATE, because the Master Servicer was from the beginning of the REMIC TRUST,
23 and during time of filing of Form 15D, through years beyond said DEFAULT
24 DATE, was CWHLS, LP.
25
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1 At page 4 line 25, Ms. Farrell attempts her coup de gras where she writes:

2 "A threshold Plaintiff cannot overcome is that the FDCPA does not
3 apply to foreclosure activities."

4 34. Here, Ms. Farrell advocates from her false premise, that there is a threshold
5 that Plaintiff just can't overcome. If we were stuck with facts as Ms. Farrell and her
6 Defendants' would no doubt desire, it would possibly be true that there could be
7 such a threshold but such is not the case. This is purely evil for her to do such a
8 thing!
9

10
11 35. The facts truly are that BANA, is a debt collector under the Act because it
12 was not a Servicer under the REMIC TRUST leading up to the time of the alleged
13 debt default on March 1, 2009 and if it ever did obtain contractual rights to be the
14 Master Servicer of that P&SA, it could not have been for years to come. In fact as
15 pointed out before the Form 15D terminated said REMIC business activity with the
16 SEC for all intents and purposes. That is a problem for BANA isn't it? It may be a
17 big problem.
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21 36. Under the foregoing circumstances it might seem of great interest to find a
22 way to suppress a Complaint such as the one in the instant case. Plaintiff may be a
23 novice to the courts and its legal system and maybe untrained in such ways. As
24 such, Plaintiff realized that there may be many needed improvements to Plaintiff's
25 Complaint. But Plaintiff is capable of learning how to do what needs to be done in
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1 order to produce a proper pleading. Furthermore, Plaintiff knows the difference
 2 between a lie and the truth, or is the proper term misrepresentation?
 3

4 **FORMAL NOTICE AND COMPLAINT OF PROFESSIONAL**
 5 **MISCONDUCT AND UNFAIR BUSINESS PRACTICE AND TACTICS**
 6 **EMPLOYED BY Ms. ELIZABETH C. FARRELL, SBN 280056 IN**
 7 **VIOLATION OF FRCP-RULES 11 AND 56(h)**

8 37. Plaintiff is disappointed to see that a promising young attorney with so much
 9 apparent potential would resort to such "*dolus malus*" tactics to obtain favorable
 10 outcome for her and the Defendants'. For Plaintiff in good faith emailed and later
 11 mailed a hard copy of the attached letter [Plaintiff's **Exhibit 10**] with Plaintiff's
 12 **Exhibits 1-5** to Ms. Farrell in order to provide Ms. Farrell with the time and
 13 opportunity to correct the record if you will regarding her claims and assertions
 14 presented to the court under the mandate of FRCP Rule 11 in light of Rule 56(h) and
 15 thereby move the court to vacate said **Order**. I am sad to report that I neither
 16 received any written, oral or other communications from Ms. Farrell which
 17 necessitated the filing of the instant pleadings in this court.
 18

19 38. It had been hoped by Plaintiff to resolve the glaring issues of law that were
 20 being abused and outright violated prior to controversy which Plaintiff had hoped
 21 were an oversight, mistake or without full knowledge. But time and experience has
 22 taught Plaintiff that if someone is intent on wrongdoing no matter how many
 23 opportunities or changes to make amends are afforded, a corrupt mind is simply not
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1 interested and will attempt to pull off the plot regardless of being exposed of the
 2 same. As such, Plaintiff hereby make formal notice to the court of what can only be
 3 described as criminal conduct and moral turpitude demonstrated in the paperwork,
 4 attitude, posture and behavior of one opposing counsel Ms. Elizabeth C. Farrell,
 5 SBN 280056. The foregoing is condemned by her own RULES OF
 6 PROFESSIONAL CONDUCT:
 7
 8

9 **Rule 3-200 Prohibited Objectives of Employment**

10 **A member shall not** seek, accept, or continue employment if the
 11 member knows or should know that the objective of such employment
 12 is:

13 (A) To bring an action, conduct a defense, assert a position in
 14 litigation, or take an appeal, **without probable cause and for the**
 15 **purpose of harassing or maliciously injuring any person**; or

16 (B) To present a claim or **defense in litigation that is not warranted**
 17 **under existing law**, unless it can be supported by a good faith
 18 argument for an extension, modification, or reversal of such existing
 19 law.

20 40. In light of the foregoing, I am prepared at this time to make formal request to
 21 the ethics committee of the California State Bar to complain of the unfair business
 22 practices and tactics employed by Ms. Farrell which has resulted in multiple felony
 23 violations, ethical violations, fraud on the court, mail fraud, denial of intangible
 24 right to honest services all of which has resulted in the premeditated denial of one's
 25 right to inherent due process of law that may have been aided and abetted by the
 26 court given the past history of Ms. Farrell who's own resume as touted on the web
 27 page of the company that she is associated with that in point of fact Ms. Farrell was
 28

1 an "extern" of the Honorable Michael M. Anello, U.S. District Court for the
2 Southern District of California.

3
4 41. Now if the foregoing facts are true, then according to Judicial Canons of
5 Ethics any judge that may have a conflict of interest is required to disclose such
6 conflict.
7

8 CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE
9 APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES
10

11 (A) Respect for Law. A judge should respect and comply with the
12 law and should act at all times in a manner that promotes public
13 confidence in the integrity and impartiality of the judiciary.

14 COMMENTARY

15 Canon 2A. **An appearance of impropriety occurs when reasonable minds,**
16 **with knowledge of all the relevant circumstances disclosed by a**
17 **reasonable inquiry, would conclude that the judge's honesty, integrity,**
18 **impartiality, temperament, or fitness to serve as a judge is impaired.**
19 Public confidence in the judiciary is eroded by irresponsible or improper
20 conduct by judges. A judge must avoid all impropriety and appearance of
21 impropriety. This prohibition applies to both professional and personal
22 conduct. A judge must expect to be the subject of constant public scrutiny and
23 accept freely and willingly restrictions that might be viewed as burdensome
24 by the ordinary citizen. Because it is not practicable to list all prohibited acts,
the prohibition is necessarily cast in general terms that extend to conduct by
judges that is harmful although not specifically mentioned in the Code. Actual
improprieties under this standard include violations of law, court rules, or
other specific provisions of this Code.

25 Further,
26

27 CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE
28 OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

1 The duties of judicial office take precedence over all other activities. In performing
 2 the duties prescribed by law, the judge should adhere to the following standards:

3
 4 (A) Adjudicative Responsibilities.

5 (1) A judge should be faithful to, and maintain professional competence in, the
 6 law and **should not be swayed by partisan interests**, public clamor, or fear of
 7 criticism.
 8

9 (C) *Disqualification.*

10 (1) **A judge shall disqualify himself or herself in a proceeding in which the**
 11 **judge's impartiality might reasonably be questioned**, including but not
 12 limited to instances in which:

- 13 1. (a) **the judge has a personal bias or prejudice concerning a party, or**
 14 **personal knowledge of disputed evidentiary facts concerning the**
 15 **proceeding**;
- 16 2. (b) the judge served as a lawyer in the matter in controversy, or a lawyer
 17 with whom the judge previously practiced law served during such
 18 association as a lawyer concerning the matter, or the judge or lawyer
 19 has been a material witness;
- 20 3. (c) the judge knows that the judge, individually or as a fiduciary, or the
 21 judge's spouse or minor child residing in the judge's household, has a
 22 financial interest in the subject matter in controversy or in a party to the
 23 proceeding, or any other interest that could be affected substantially by
 24 the outcome of the proceeding;
- 25 4. (d) the judge or the judge's spouse, or a person related to either within
 26 the third degree of relationship, or the spouse of such a person is:
 - 27 1. (i) a party to the proceeding, or an officer, director, or trustee of a
 28 party;
 2. (ii) acting as a lawyer in the proceeding;
 3. (iii) known by the judge to have an interest that could be
 substantially affected by the outcome of the proceeding; or

1 4. (iv) to the judge's knowledge likely to be a material witness in
2 the proceeding;

3 5. (e) the judge has served in governmental employment and in that
4 capacity participated as a judge (in a previous judicial position),
5 counsel, advisor, or material witness concerning the proceeding or has
6 expressed an opinion concerning the merits of the particular case in
7 controversy.

8 2. (2) A judge should keep informed about the judge's personal and fiduciary
9 financial interests and make a reasonable effort to keep informed about the
10 personal financial interests of the judge's spouse and minor children residing
11 in the judge's household.

12 42. Now, if said judge is conflicted with any of the above issues of the Canons, he
13 knew or should have known to step down off the case. Clearly something is amiss
14 given his severe ruling [**Order**] that is not supported by the law, facts, evidence
15 submitted by Ms. Farrell [Defendant's **Exhibit D**] and BANA [Plaintiff's **Exhibits**
16 **1-5**] or even the request for relief from opposing counsel. Clearly there appears to
17 be a bias in his heart and under such circumstances he should in all good conscience
18 have recused himself as a matter of law.

19 43. Further it is hoped that with the newly obtained access to official public
20 records of the Federal Reserve and of the SEC, the court will reconsider and allow
21 Plaintiff's case to proceed or at the very least dismiss the case without prejudice.

22 44. Plaintiff request that the honorable court consider the substance of Plaintiff's
23 motion over the incompetent form of same per *Haines v. Kerner* 404 U.S. 519,
24 which states that courts must not hold pro se litigants to the same standards as a
25 26
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28

1 lawyer of the bar regarding procedure, etc. Plaintiff further reserves the right to
2 amend this motion.

3 4 **CONCLUSION**

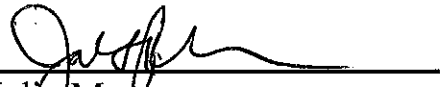
5 **Notice of Default and Election to Sell Under Deed of Trust states that the**
6 **date when payment was do under the Deed of Trust was 03/01/2009. There is**
7 **no evidence that on that date any other than** CWHLS, LP, later named: BAC
8 Home Loans Servicing LP was Master Servicer of said P&SA which is the creating
9 document of the Trust for which The Bank of New York Mellon FKA Bank of New
10 York as alleged Trustee of said trust. For that reason, if BANA had or has any
11 interest in the collection of any alleged debt in connection to any obligation which is
12 secured by alleged subject Deed of Trust such interest is not and cannot be a
13 Servicer of said alleged Obligation and alleged Deed of Trust. BANA, could only
14 be engaged in the role of a debt collector as that term is provided in **Title 15**
15 **U.S.C.1692(h)(6) and as reflected in its own letters mailed to Plaintiff supra.**

16 CWHLS, LP, later named: BAC Home Loans Servicing LP was the Master
17 Servicer at the time at which the alleged Default occurred according to the records
18 found in the public records which have been granted judicial notice of this
19 Honorable Court and no other name has been judicially noticed by this honorable
20 court as Master Servicer or even loan servicer.

1 As such, Plaintiff request that this honorable court do the right thing and set
2 aside its Order to Dismiss Complaint with prejudice that Plaintiff may pursue
3 Plaintiff's inherent right to the due processes of the law of American Jurisprudence.
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6 Date: February 4, 2014

Respectfully Submitted,

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9 Julio Mayen
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